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BEFORE THE BOARD OF PATENT APPEALS
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Appeal 2009-006938
Application 10/670,528
Technology Center 3700

Before JENNIFER D. BAHR, JOHN C. KERINS and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

DECISION ON APPEAL

1 STATEMENT OF THE CASE

2 The Appellants appeal under 35 U.S.C. § 134 from the Examiner's

3 decision finally rejecting claims 10, 13, 17, 20, 24, 27, 31, 34, 38, 40 and 41

4 under 35 U.S.C. § 103(a) as being unpatentable over Savitski (US 6,596,122

1 B1, issued Jul. 22, 2003) and Fischerkeller (US 6,155,302, issued Dec. 5,
2 2000). A hearing was held on January 13, 2010. We have jurisdiction under
3 35 U.S.C. § 6(b).

4 We AFFIRM.

5 Claim 10 recites:

6
7 10. A laser-welded composite part
8 produced by a method for connecting a plastic pipe
9 to another plastic part, wherein

10 an outer layer of the plastic pipe and an
11 outer layer of the other plastic part are largely
12 opaque to laser light of a certain wavelength,
13 which comprises:

14 sheathing both the plastic pipe and the other
15 plastic part ends thereof by an additional adaptor
16 made of a plastic transmissive to laser light, and

17 fastening the adaptor to at least one of the
18 plastic pipe and the other plastic part by laser-
19 beam welding;

20 wherein the composite part is a motor-
21 vehicle pipeline; and

22 wherein the other plastic part has at least one
23 nipple which is provided for the connection to the
24 pipe, wherein said nipple is provided on the
25 outside with a profile.

26
27 Independent claims 17, 24 and 31 end with “wherein” clauses identical to
28 the last “wherein” clause of claim 10.

ISSUES

The Appellants present a single argument attacking the rejections of claims 10, 13, 17, 20, 24, 27, 31, 34, 38, 40 and 41. Claim 10 is representative of the group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner finds that Savitski discloses the method steps recited for producing the composite part of claim 10 and that Fischerkeller discloses providing a plastic part with at least one externally profiled nipple for the connection of the plastic part to a plastic pipe. (Ans. 3-4). The Examiner reasons that it would have been obvious

to provide the other plastic part of Savitski with at least one nipple wherein the nipple is provided on the outside with a profile, in light of the teachings of Fischerkeller, in order to connect the other plastic part to the pipe. Such a modified construction of the Savitski pipes would enable pre-assembly of the pipes prior to laser welding, facilitating their alignment and providing a more reliable connection.

(Ans. 4). The resulting composite part would have had the structure of the laser-welded composite part claimed in claim 10 and might have been used as a motor-vehicle pipeline.

The Appellants contend that one of ordinary skill in the art would not have been motivated to modify one of the pipe ends connected by the method disclosed in Savitski to provide a nipple. The Appellants contend that this is so because Savitski already explicitly discloses a way to connect the pipe ends without a nipple. (App. Br. 6; Reply Br. 5). The Appellants also contend that this is so because one stated object of Savitski's method was to simultaneously form both lap and butt joints rather than joints in which the ends of the two joined pipes overlap. (Reply Br. 4).

1 This appeal turns on one issue:

2 Have the Appellants shown that the Examiner failed to
3 articulate reasoning with some rational underpinning sufficient
4 to support the conclusion that it would have been obvious to
5 provide one of the plastic pipes joined by Savitski's method
6 with a nipple and to provide the nipple on the outside with a
7 profile, thereby producing the laser-welded composite part
8 claimed in claim 10?

9

10 FINDINGS OF FACT

11 The record supports the following findings of fact ("FF") by a
12 preponderance of the evidence.

13 1. Savitski discloses a method for joining or connecting a plastic
14 pipe 20 to another plastic pipe 30 to form a composite part. (Savitski, col.
15 10, ll. 4-6).

16 2. Savitski's method includes sheathing the end portions 16, 26 of
17 the two pipes 20, 30 by an additional sleeve or adaptor 40 made of a plastic
18 transmissive to laser light and fastening the adaptor 40 to at least one of the
19 plastic pipes 20, 30 by welding. (Savitski, col. 10, ll. 19-42). Savitski
20 teaches the use of a laser light source to weld the adaptor 40 to at least one
21 of the plastic pipes 20, 30 as an equivalent interchangeable with the infrared
22 light source described at column 10, lines 19-42 of Savitski. (See Savitski,
23 col. 6, ll. 35-43).

24 3. Outer layers of absorbing film 44b, 44c wrapped around the end
25 portions 16, 26 of the two pipes 20, 30 prior to welding are largely opaque to
26 laser light of a certain wavelength. (See Savitski, col. 10, ll. 14-18).

1 4. Savitski describes the method as simultaneously forming lap
2 and butt joints between the pipes 20, 30. (Savitski, col. 10, ll. 4-6). Savitski
3 describes the butt joints formed by Savitski's method as being smooth and
4 gap free about the internal pipe bore. Savitski teaches that eliminating gaps
5 eliminates the possibility that the absorbing film 44b, 44c wrapped around
6 the end portions 16, 26 of the two pipes 20, 30 might contaminate fluid
7 flowing past the joint. Savitski also teaches the desirability of eliminating
8 any gaps about the internal pipe bore where debris and living organisms
9 might accumulate. (Savitski, col. 4, ll. 38-42).

10 5. Fischerkeller discloses an attachment arrangement for a fuel
11 line 20 on a connector 10. (Fischerkeller, col. 1, l. 66 – col. 2, l. 2). The
12 fuel line is a rigid plastic tube or pipe. (Fischerkeller, col. 2, ll. 23-24).

13 6. Fischerkeller's connector 10 is a plastic nipple provided with a
14 Christmas-tree profile on its outer circumference. (Fischerkeller, col. 2, ll.
15 7-15 and fig. 1).

17 PRINCIPLES OF LAW

18 Where, as here, an applicant fails to produce objective evidence
19 sufficient to prove a secondary indicium of nonobviousness, the applicant's
20 burden on appeal is to show that the examiner failed to produce sufficient
21 evidence to establish prima facie obviousness. *In re Kahn*, 441 F.3d 977,
22 985-86 (Fed. Cir. 2006). In order to establish prima facie obviousness, the
23 examiner must articulate reasoning with some rational underpinning to
24 support the legal conclusion of obviousness. *Id.* at 988. "The obviousness
25 analysis cannot be confined by a formalistic conception of the words
26 teaching, suggestion, and motivation, or by overemphasis on the importance

1 of published articles and the explicit content of issued patents.” *KSR Int’l*
2 *Co. v. Teleflex, Inc.*, 550 U.S. 398, 419 (2007).

3
4 ANALYSIS

5 The Examiner has articulated an apparent reason to combine elements
6 disclosed in Savitski and Fischerkeller in the fashion claimed in claim 10.

7 The Examiner reasons that providing one of the plastic pipes joined by
8 Savitski’s method with a nipple and providing the nipple on the outside with
9 a profile would enable pre-assembly of the pipes prior to laser welding. The
10 Examiner further reasons that enabling pre-assembly of the pipes prior to
11 laser welding would have facilitated the alignment of the pipes and provided
12 a more reliable connection. (Ans. 4). The Appellant does not contend that
13 the Examiner’s reasoning lacks rational underpinning. The reasoning
14 explains why one of ordinary skill would have considered providing one of
15 the plastic pipes joined by Savitski’s method with a nipple even though
16 Savitski already explicitly disclosed a way to connect the pipe ends without
17 a nipple.

18 Savitski’s stated object of simultaneously forming lapped and butt
19 joints between the pipe ends (*see* FF 4) would not have discouraged one of
20 ordinary skill in the art from providing one of the plastic pipes joined by
21 Savitski’s method with a nipple and providing the nipple on the outside with
22 a profile. Savitski is merely silent as to the combination proposed by the
23 Examiner. Savitski neither criticizes nor disparages providing one of the
24 plastic pipes joined by Savitski’s method with a nipple.

25 Although Savitski articulates reasons why the formation of a butt joint
26 between the pipes would have been desirable (*see* FF 4), these reasons

1 would not have led one of ordinary skill in the art away from the claimed
2 subject matter. For example, Fischerkeller's disclosure of an attachment
3 arrangement for a fuel line on a connector or nipple (*see* FF 5 and 6) implies
4 that possible flow impairment or accumulation of debris and living
5 organisms at the joint would not have discouraged one of ordinary skill in
6 the art from providing a nipple for connecting pipes for such applications as
7 motor-vehicle pipelines. One of ordinary skill in the art would have readily
8 observed that insertion of the nipple into the end of the plastic pipe would
9 have tended to shield fluid flowing past the joint from contamination by an
10 opaque or light absorbing outer layer at the end portion of the plastic pipe.

12 CONCLUSION

13 The Appellants have not shown that the Examiner failed to articulate
14 reasoning with some rational underpinning sufficient to support the
15 conclusion that it would have been obvious to provide one of the plastic
16 pipes joined by Savitski's method with a nipple and to provide the nipple on
17 the outside with a profile, thereby producing the laser-welded composite part
18 claimed in claim 10. Therefore, the Appellants have not shown that the
19 Examiner erred in rejecting representative claim 10, or in rejecting those
20 claims grouped with representative claim 10, under § 103(a) as being
21 unpatentable over Savitski and Fischerkeller.

23 DECISION

24 We AFFIRM the Examiner's decision rejecting claims 10, 13, 17, 20,
25 24, 27, 31, 34, 38, 40 and 41.

